



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 8**  
**999 18<sup>TH</sup> STREET - SUITE 300**  
**DENVER, CO 80202-2466**  
**Phone 800-227-8917**  
**<http://www.epa.gov/region08>**

**August 27, 2003**

Ref: 8ENF-T

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Ben Nothdurft  
Registered Agent  
Ben's Inc.  
3317 North Cliff  
Sioux Falls, SD 57104

RE: UNDERGROUND INJECTION CONTROL (UIC)  
Proposed Administrative Order and  
Opportunity to Request a Hearing

Dear Mr. Nothdurft:

The enclosed document is a Proposed Administrative Order (PAO) and Opportunity to Request a Hearing for violations of the Safe Drinking Water Act (SDWA). Please read the PAO soon and carefully, since it describes your rights and responsibilities in this matter as well as EPA's authority, the factual basis of the violations, and the background for the proposed penalty. Also enclosed is a copy of the Rules of Practice that govern these proceedings, and, in case you meet the criteria, an information sheet about the Small Business Regulatory Fairness Act.

Any person who violates any requirement of the UIC program is subject to enforcement action under Section 1423 of the SDWA (42 U.S.C. Section 300h-2, et seq.). Enforcement may include administrative penalties of \$5,500 per day for each violation up to a maximum penalty of \$137,500, and civil penalties of up to \$27,500 per day for each violation, and will mandate compliance with all provisions of the SDWA. In addition, if the violation is willful, the SDWA authorizes criminal prosecution in accordance with Title 18 of the United States Code.

You are required to take action in less than 30 days, to avoid the possibility of having a default judgment entered against you that would impose the penalty amount in the PAO.

Whether or not you request a hearing, we encourage you to



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confer informally with EPA concerning the alleged violations to try to negotiate a settlement. You may wish to appear at an informal conference yourself and/or be represented by your counsel. To arrange for such a conference, please contact Jim Eppers, Enforcement Attorney, Legal Enforcement Program, at the number provided below. Request for such a conference does not extend the thirty (30) day period during which a request for hearing must be submitted.

Public Notice of EPA's PAO and the opportunity to provide written comments on the PAO is also being provided pursuant to Section 1423(c)(3)(B) of the SDWA [42 U.S.C. Section 300h-2(c)(3)(B)]. Any person who comments on the PAO has a right to participate in the hearing, if there is one.

If you have any technical questions relating to this matter, please call Judy Binegar-Wilson, UIC Enforcement Team, Technical Enforcement Program, at (303) 312-6606. All legal questions can be directed to Jim Eppers at (303) 312-6893. Ms. Wilson and Mr. Eppers can also be reached at the following address:

Judy Binegar-Wilson (8ENF-T)  
U.S. EPA, Region 8  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466

OR

James H. Eppers (8ENF-L)  
Enforcement Attorney  
U.S. EPA, Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

We urge your prompt attention to this matter.

Sincerely,

**SIGNED**

Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures:

Proposed Administrative Order and  
Opportunity to Request a Hearing  
40 C.F.R. Part 22  
Public Notice

## U.S. EPA Small Business Resources Fact Sheet

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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IN THE MATTER OF	)	
	)	
BEN'S, INCORPORATED	)	<b>Docket No. SDWA-08-2003-0046</b>
Rapid City, South Dakota	)	
Respondent	)	
	)	<b>PROPOSED</b>
Proceedings Under Section 1423(c)	)	<b>ADMINISTRATIVE ORDER</b>
of the Safe Drinking Water Act,	)	<b>AND OPPORTUNITY TO</b>
42 U.S.C. § 300h-2(c)	)	<b>REQUEST A HEARING</b>

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**STATUTORY AUTHORITY**

This Proposed Administrative Order and Opportunity to Request a Hearing (Order) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 1423 of the Safe Drinking Water Act (Act), 42 U.S.C. § 300h-2(c). Authority to take this action has been properly delegated to the Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice, EPA, Region 8.

**FINDINGS**

1. Ben's, Incorporated, (Respondent) at all times pertinent hereto, is a corporation organized under the laws of South Dakota, and is authorized to do business in the State of South Dakota. Respondent is a "person" within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

2. Respondent, at all times pertinent hereto, owned and

operated an automotive engine repair and maintenance facility known as Bargain Barn Tire Center (Bargain Barn), which is located at 1811 Deadwood Avenue, Rapid City, South Dakota.

3. Pursuant to Section 1422 of the Act, 42 U.S.C. § 300h-1, and 40 C.F.R. Part 147 Subpart QQ, Section 147.2101(b), EPA administers the Underground Injection Control (UIC) Program for Class I, III, IV, and V wells in the State of South Dakota. The effective date of the program is December 30, 1984. The program requirements are located at 40 C.F.R. Parts 124, 144, 146, 147, and 148.

4. Pursuant to 40 C.F.R. § 144.3, the term "Director", as used in 40 C.F.R. Parts 124, 144, and 146, means the EPA Regional Administrator in states such as South Dakota where there is no EPA-approved state UIC program.

5. On or about July 30, 2001 EPA mailed a Class V Injection Well Inventory Information Request letter to Bargain Barn via certified mail. The letter was delivered to and received by Bargain Barn on or about August 1, 2001 (certified 7001 0320 0006 0659 3455). The inventory information was not submitted to EPA within the required 30 days of receipt of the letter. By April 1, 2002, the inventory information still had not been submitted by Respondent.

6. On or about September 25, 2001 an EPA representative performed a routine inspection of Respondent's facility. The EPA

inspector found on site a UIC Class V fluid disposal system which EPA designates as a Class V injection well.

7. Motor vehicle waste disposal wells are defined at 40 C.F.R. §144.81(16) as follows: "Motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility that does any vehicular repair work."

8. Septic tanks with drain fields, dry wells, cesspools, sumps with outlet pipes and any other types of disposal systems which allow fluids to move into USDWs are considered shallow injection wells. Respondent's disposal system, as identified in the inventory verification inspection in paragraph 6 above, is classified as a "Class V Injection Well" as defined by 40 C.F.R. §144.6 and §146.5 and a "Motor Vehicle Waste Disposal Well" as defined by 40 C.F.R. §144.81(16). Respondent was authorized by rule (40 C.F.R. §144.24) to operate the disposal system described above. Respondent was therefore subject to applicable requirements of 40 C.F.R. § 124, §144 and §146.

9. On or about November 8, 2001, EPA mailed another Inventory Request Form with a Class V well compliance letter to Respondent, via certified mail (7001 0320 0005 9387 2403). The letter was delivered to and received by Respondent on or about

November 15, 2001. The letter required Respondent to permit or close the well and to submit the required inventory information within 30 days of receipt of the letter. These requirements were never complied with by Respondent.

10. On April 1, 2002, the ownership of the Bargain Barn was transferred from Ben's Incorporated to James Heil, who had been employed by Ben's Incorporated as the manager of the facility.

11. **Respondent is in violation** of 40 C.F.R. §144.26 and §144.83(a) for failure to provide to EPA inventory information concerning its Class V disposal system. The duration of Respondent's violations is from September 1, 2001 to March 31, 2002.

12. **Respondent is in violation** of 40 C.F.R. §144.12(a) and 40 C.F.R. §144.82(a)(1) for owning, operating, and maintaining a Class V disposal facility which, through injection activity, allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 C.F.R. Part 142 or may otherwise adversely affect the health of persons. The failure of Respondent to discontinue the use of its Class V motor vehicle waste disposal system may endanger or otherwise affect the health of persons. The duration of the Respondent's violations is from September 25, 2001 to March 31, 2002.

13. **Respondent is in violation** of 40 C.F.R. §144.12(c) (1) and (2) and 40 C.F.R. §144.82(a) (2) and (b) for failure to close or retrofit the Class V disposal system in a manner that would keep contaminants from entering a USDW. The duration of Respondent's violations for failure to close or retrofit the Class V disposal system is from September 25, 2001 to March 31, 2002.

**PROPOSED ORDER WITH ADMINISTRATIVE CIVIL PENALTY**

Pursuant to Section 1423(a) of the Act, 42 U.S.C. § 300h-2, and based on the foregoing findings, after taking into account: (1) Respondent's alleged violations are serious and a threat to human health and environment; (2) Respondent gained an economic advantage over its competition by virtue of its violations; (3) EPA is unaware that Respondent has a history of violations such as these alleged in the complaint; (4) EPA is unaware of good faith efforts by Respondent to comply with applicable UIC regulations; (5) EPA, while aware that Respondent is a small business, has no basis to believe that the proposed penalty is one which would have a severe economic impact on Respondent; and (6) such other matters as justice may require, **EPA HEREBY ORDERS** that:

1. Respondent shall pay an administrative civil penalty in



the amount of nine thousand, seven hundred ninety-five dollars (\$9,795.00) for Respondent's violations of the UIC Program described above. Payment must be made by money order or certified check made payable to "Treasurer, United States of America" and mailed within thirty (30) days of the effective date of this Order to the following address:

EPA - Region 8  
Regional Hearing Clerk  
P.O. Box 360859  
Pittsburgh, Pennsylvania 15251.

A copy of said check shall be mailed to the following address:

James H. Eppers (8ENF-L)  
Enforcement Attorney  
U.S. EPA - Region 8  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466.

2. Respondent shall comply with all provisions of the Safe Drinking Water Act and the Underground Injection Control Program.

3. The provisions of this Order shall apply to and be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns.

**NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

1. Under Section 1423(c) (3) (A) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2(c) (3) (A), Respondent may request, within

thirty (30) days of receiving this Order, a hearing on this matter. Such request (also referred to as "Answer" and defined in 40 C.F.R. §22.15) must be made in writing and must specify the factual and legal issues in dispute and the specific factual and legal grounds for Respondent's defense(s). At the hearing, Respondent may contest any material fact set forth herein and the propriety of the proposed penalty described above. The procedures for a hearing, if one is requested, are set out in 40 C.F.R. Part 22, Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination, or Suspension of Permits, Rule dated July 23, 1999 64 Federal Register 141, a copy of which is enclosed with this Order. If Respondent does not request a hearing, EPA may finalize this Order, thereby assessing the full penalty proposed above.

2. Respondent must send any request for a hearing to:

Tina Artemis  
Regional Hearing Clerk  
U.S. EPA Region 8, 8RC  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466.

Whether or not Respondent requests a hearing, Respondent may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. Respondent may be represented by counsel at the informal conference. If a

settlement is reached, it will be formalized in a document entitled Consent Agreement and finalized by the issuance of a Final Order by the Regional Judicial Officer. If Respondent wishes to confer informally with EPA, please contact Jim Eppers, Enforcement Attorney, at 303-312-6893.

3. Respondent is advised that EPA is required to notify the public about this action, and that members of the public have a right under Section 1423(c) (3) (B) of the Act, 42 U.S.C. § 300h-2(c) (3) (B), to comment on this matter. Those members of the public who comment will also have the right to present evidence and be heard at any hearing on this matter.

4. EPA will review any comments submitted on the Order and will thereafter determine whether to modify or withdraw the Order or whether to adjust the proposed penalty.

#### **GENERAL PROVISIONS**

1. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R § 144.26 and 40 C.F.R. §144.83(a); 40 C.F.R. §144.12(a) and 40 C.F.R. §144.82(a) (1); and 40 C.F.R. § 144.12(c) (1) and (2) and 40 C.F.R. §144.82(a) (2) and (b) (2) or any other applicable provision of the Act or the UIC regulations implementing the Act, which remain in full force and effect. Issuance of this Order is not an election by the EPA to forego any civil or any criminal action

otherwise authorized under the Act.

2. Violations of the terms of this Order may subject Respondent to further enforcement action. As described in Section 1423(b) of the Act, 42 U.S.C. § 300h-2(b)(1) and (2), further enforcement action may include civil judicial action for injunctive relief, with possible civil penalties of up to \$27,500.00 for each day of violation, or criminal penalties, or both.

**EFFECTIVE DATE**

Pursuant to Section 1423(c)(3)(D) of the Act, 42 U.S.C. §300h-2(c)(3)(D), this Order becomes effective thirty (30) days after the date of issuance noted below, unless an appeal is taken pursuant to Section 1423(c)(6) of the Act.

Issued this 12TH day of August, 2003.

**SIGNED**

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Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance,  
and Environmental Justice  
U.S. EPA, Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

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CERTIFICATE OF SERVICE

I hereby certify that the original and one true copy of this Proposed Administrative Order and Opportunity to Request a Hearing was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18<sup>th</sup> Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail Return Receipt requested mail to:

Ben Nothdurft  
Registered Agent  
Ben's Inc.  
3317 North Cliff  
Sioux Falls, SD 57104

and a true copy was sent via regular U.S. Mail to:

Anita Yan  
State of South Dakota  
Department of Environment and Natural Resources  
Joe Foss Building  
523 East Capitol  
Pierre, SD 57501

Dated: August 27, 2003

By: SIGNED  
Judith McTernan

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS PLEASE CONTACT THE  
REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON AUGUST 27, 2003.